

HOUSE BILL 3322  
By Williams (Wil)

AN ACT to authorize Cheatham County to levy and collect a privilege tax on new development in the county in order to provide that new development contribute its fair share of the cost of providing public facilities and services made necessary by such new development.

WHEREAS, Cheatham County, Tennessee, has been one of the fastest growing counties in the state for the past fifteen (15) years, having been impacted by the rapid growth in the standard metropolitan area of Nashville; and

WHEREAS, anticipated continued growth from the expansion of Nashville is expected to accelerate due to the continuing location of manufacturing and commercial businesses in the Middle Tennessee area, and from other factors; and

WHEREAS, current projections show that:

(1) county population will be forty-two thousand (42,000) persons in year 2010, an increase of fifty-five percent (55%) from 1990 to 2010; there will be a demand for approximately five thousand (5,000) additional dwelling units between 1990 and 2010; and new residential and non-residential development will consume an additional three thousand (3,000) acres of land in Cheatham County; and

(2) projected growth and land use development will cause a demand for county-provided capital facilities (schools, roads, jails, parks, county governmental facilities, etc.) in an amount well in excess of forty million dollars (\$40,000,000) over the next fifteen (15) years; and

(3) the county's present revenue raising authority is limited and relies heavily on intergovernmental transfers which are not subject to county control and on property taxes, which would impose the costs of new growth on existing residents rather than on new residents and businesses who create the demand for the additional expenditures; and

WHEREAS, Cheatham County is committed, both to present and future county residents, to maintaining a level of public facilities and services commensurate with those presently provided; and

WHEREAS, Cheatham County is prepared to impose a fair, equitable and reasonable share of the costs of providing the necessary public facilities and services on existing residents of the county; and

WHEREAS, the county's present population employment base, tax base and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, due to these unique circumstances, it is necessary and appropriate that Cheatham County be given authorization to extend its taxing power to enable the county to impose a fair and reasonable share of the costs of public facilities necessitated by new development on that development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the state of Tennessee for such additional tax measures to impose costs on those who benefit from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development in Cheatham County; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and cited as the "Cheatham County Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning appears from the context:

(1) "Board of Adjustments and Appeal" means the board established in Cheatham County pursuant to the requirements of the Southern Standard Building Code Congress;

(2) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home, but excludes those buildings specified in Section 6 below;

(3) "Building Permit" means a permit for development issued in Cheatham County, whether by the county or by any city therein;

(4) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expense, for the purchase, construction, or replacement of the physical assets of the community are included;

(5) "Certificate of Occupancy" means a license for occupancy of a building or structure issued in Cheatham County, whether by the county or by any city therein;

(6) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of a residential or non-residential use;

(7)

(A) "Floor Area" for non-residential development means the total of the gross horizontal area of all floors, including usable basements and cellars, below

the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such building or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, services, or production areas; and

(B) "Floor Area" for residential development means the total of the gross horizontal area of all floors, including basements, cellars, or attics which is heated and/or air conditioned living space, or designed to be finished into heated and/or air-conditioned living space at a future date;

(8) "General Plan" means the official statement of the planning commission which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-3-301, 13-3-302, and 13-4-302. For the purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage;

(9) "Governing Body" means the county commission of Cheatham County, Tennessee;

(10) "Major Street or Road Plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, Sections 13-3-402 and 13-4-302, showing among other things, "the general location, character, and extent of public ways (and) the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways...";

(11) "Non-residential" means the development of any property for any use other than residential use, except as may be exempted by this act;

(12) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number;

(13) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status;

(14) "Public Buildings" means buildings owned by the state of Tennessee or any agency thereof, a political subdivision of the state of Tennessee, including but not necessarily limited to counties, cities, school districts and special districts, or the federal government or any agency thereof;

(15) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the county and/or city;

(16) "Residential" means the development of any property for a dwelling unit or units;

(17) "Subdivision Regulations" means the regulations adopted by the Cheatham County regional planning commission pursuant to state statutory authorization on August 22, 1991, as amended, by which the county regulates the subdivision of land; and

(18) "Zoning Resolution" means the resolution adopted by the governing body pursuant to state statutory authorization on January 21, 1991, as amended, by which the county regulates the zoning, use and development of property.

SECTION 3. It is the intent and purpose of this act to authorize Cheatham County to impose a tax on new development in the county payable at the time of issuance of a building permit or certificate of occupancy so as to ensure and require that the person responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded facilities made necessary by such development.

SECTION 4. Engaging in the act of development within Cheatham County, except as provided in Section 6 herein, is declared to be a privilege upon which Cheatham County may, by resolution of the governing body, levy a tax in the manner established in Section 7.

SECTION 5. The governing body shall impose the tax authorized herein by resolution after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for such public facilities is reasonably related to new development in the county. The resolution of the governing body imposing this tax shall state the rate of tax on new residential and non-residential development. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

- (1) Public Buildings;
- (2) Places of Worship;
- (3) Barns or outbuildings used for agricultural purposes;
- (4) Replacement structures for previously existing structures destroyed by fire or other disaster;
- (5) Additions to a single-family dwelling;

(6) A structure owned by a non-profit corporation which is a qualified 501(c)3 corporation under the Internal Revenue Code; and

(7) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided that the permanent structure is a residence for the owner and occupant of the mobile home and that owner and occupant has resided on the property for a period of not less than three (3) years.

SECTION 7. For the exercise of the privilege described herein, Cheatham County may impose a tax on new development in such manner as the county legislative body may from time to time determine.

The county may develop a tax rate schedule by which residential and non-residential uses are classified by type for the purpose of imposition of the tax authorized herein.

SECTION 8. The tax established in this act shall be due and collected at the time of application for a building permit for development as herein defined by a county official duly authorized by the county executive. If the building permit is issued by the county, the county building official or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county and as approved by the county attorney. If the building permit is issued by a city, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building inspector that the full amount of the tax due the county has been paid. No building permit for development as herein defined shall be issued in Cheatham County unless the tax has been paid in full to the county or a negotiable instrument approved by the county attorney and payable to the county has been received. The issuance of a building permit by any city official, without a certificate from the county that the tax has been paid shall render the city liable to the county for the sum or sums that would have been collected by the county, had the certificate of tax paid been required by the city.

SECTION 9. All tax funds collected shall be used for the purpose of providing public facilities, the need for which is reasonably related to new development.

SECTION 10. The authority to impose this privilege tax on new development in Cheatham County is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land development regulatory measures granted either by the private or public acts of the state of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Cheatham County and by notifying the official that the payment is made under protest.

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. Appeals shall be heard by the Cheatham County Board of Adjustment and Appeals. Hearing shall be scheduled within forty-five (45) days of the written request for appeal.

The Board of Adjustment and Appeals shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the board for further information.

The Board of Adjustment and Appeals shall act as a quasi-judicial body whose purpose is to determine the intent of the act, its applicability to the appellant, and to rule upon the interpretation of the official. The board will not be bound by formal rules of evidence applicable to the various courts of the state.

Hearings before the board shall proceed as follows:

(A) The building official shall explain his ruling and the reasons for his ruling;

(B) The appellant shall explain his reasons for protesting the ruling;



(C) The board may request further information from any county official, including, but not limited to the county executive, county commissioners or committee members, the county attorney, or the county planning staff. The board will not have the power of subpoena; and

(D) The board will deliberate and render a decision by a majority vote. Decisions will be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the Board of Adjustment and Appeals shall be final, except that either the building official or the person aggrieved may seek review of the board's actions by certiorari and supersedes to the Chancery Court of Cheatham County, Tennessee, provided that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Cheatham County. This act shall be deemed to create an additional and alternative method for Cheatham County to impose and collect taxes for the purpose of providing public facilities made necessary by new development in the county.

SECTION 13. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Cheatham County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by him to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes it shall become effective upon being approved as provided in Section 14.